

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 3, 2016/2017

PLE0042 – ENGLISH FOR LAW
(Foundation in Law)

31 MAY 2017
9.00 a.m. – 11.00 a.m.
(2 Hours)

INSTRUCTIONS TO STUDENT

1. This question paper consists of **SIX** pages only.
2. Answer **ALL** questions in **Sections A, B and C**.
3. Please write all your answers in the Answer Booklet provided.

SECTION A: READING AND VOCABULARY [25 MARKS]**PART 1: READING COMPREHENSION (20 MARKS)**

Read the passage below and answer all questions.

Compassion and the Rule of Law

- 1 A 15 year-old girl has been sentenced in Bradford Crown Court in the United Kingdom to a two-year youth rehabilitation order after pleading guilty to causing grievous bodily harm with intent. When she was 14, she deliberately stabbed a man in front of his two young children as he had sexually abused her for seven years. In highly unusual and personal sentencing remarks, Judge Durham Hall states that the girl has suffered terribly at the hands of the victim, and it would be a disgrace to send her to prison after what she has suffered. Refusing to impose a mandatory fine on the girl, the judge remarks, "If anyone tries to force you to pay the fine, I will pay it myself." 5
- 2 Judge Durham Hall has scored full marks in the court of public opinion, but there are some notes of concern for both his empathy and his compassion. The judge's comments, taken together with the non-custodial sentence he hands down, could encourage those who feel aggrieved to take matters into their own hands and mete out punishment. Obviously, this concerns the possibility of two young children seeking vengeance on the accused who scarred their father for life. The waiving of the mandatory fine, however nominal the sum may be, sends the wrong message to the world at large that the judiciary promotes favouritism for one side over another. In this case, the judge has the discretion to reduce the fine to nil if the girl is unable to pay, but this does not appear to have been suggested by the girl's counsel. Critics sceptical of the judgement also argue that empathetic and compassionate judging would mean emotional and irrational judging that lets the guilty off the hook. In other words, empathy and compassion are seen as finding in the wrongdoers' favour and condoning their criminal acts. 15
- 3 Empathy is a capacity for understanding the desires and goals of others. It does not require an empathetic person to take sides among competing viewpoints. Thus, judges may have empathy for all the litigants. After understanding both sides, they must decide which side prevails. Regrettably, empathy has been often misinterpreted by opposing parties as undermining fairness in judgements. In fact, without empathy in judging, judges will more likely gravitate towards the arguments which are more familiar and similar to their own beliefs. 25
- 4 Since judges believe in their own point of observation and have blind spots or prejudices which cannot be detached from them, there is a possibility that their perspective is partial. As judges are also shaped and influenced by their perspectives and biases, they cannot be expected to be superhumans. They can only be expected to be mindful of their biases or tendencies concerning how they view various types of cases, which party they tend to agree with and whose claims more easily resonate with them when they step into their judicial roles. These tendencies matter a great deal when making judicial decisions, especially in employment discrimination cases that largely depend on how judges see the facts through their own lenses. Besides, many workplace discrimination suits do not find their way to 35 40

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a jury and are decided solely by judges on summary judgment, rendering it imperative for judges to give thorough consideration to the parties' accounts from their own viewpoints.

5 While most definitions of empathy do not include a desire to act on another person's behalf, compassion is the feeling that arises in witnessing another person's suffering and motivates a subsequent desire to help. *There are indeed reasons to not easily accept compassion in the legal realm.* In some statutes, there are expressive provisions to explicitly permit the use of compassion as part of the exercise of allowable discretion. As an example, a prison parole scheme might permit compassionate release if the prisoner has terminal cancer. Immigration laws might take compassion into account in granting asylum to immigrants who flee from an oppressive regime. In these situations, although compassion does not pose a special challenge to the rule of law since it is permitted by a statute, compassion could still influence legal decision-making. On the other hand, the pardon and clemency powers present a more difficult case in relation to the effect of compassion on the rule of law. They permit the executive very broad discretion to exercise compassion freely in changing a sentence stipulated in law by exempting a party from punishment or by commuting a sentence, and this becomes a threat to the rule of law.

6 A more serious problem that erodes the rule of law is posed when compassion is used to make unauthorised exceptions to a rule. When applying the United States' federal sentencing guidelines, a compassionate judge may make an exception by arriving at a sentence lower than the mandatory minimum sentence provided in the guidelines. The guidelines, essentially intended to safeguard against an unfair sentence, include decades in prison for a first time and low-level drug offence. This has shocked the conscience of many judges. In their view, *these guidelines have become a cure that is worse than the disease*, and they refuse to comply with a mandatory minimum sentence that is exceptionally unjust. Having these courageous judges as a safety valve, however, cannot be considered a victory for victims affected by the guidelines. If defendants are lucky to have their judgements heard by a deeply moral and compassionate judge, they will receive lighter sentences. Sentencing, many argue, should not depend on the luck of the judicial draw or whether the judge is in a punitive mood to hand down a harsh punishment on a particular day. The problems of judges exercising compassion then become obvious: unequal treatment and arbitrariness. Ultimately, compassion in law cannot resolve contests between competing viewpoints. It does offer a way of taking the viewpoint of others with understanding and humility.

Adapted from Bandes, S.A. (2016). Compassion and the rule of law. *International Journal of Law in Context*, 13(2), 1-29. Retrieved from https://www.researchgate.net/publication/311813929_Compassion_and_the_Rule_of_Law

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1. Suggest four examples to prove Judge Durham's empathy and compassion which have earned him full marks in the court of public opinion. (2 marks)
2. Support the opponents of judiciary empathy and compassion by giving three arguments. (3 marks)
3. Provide two arguments to substantiate the claim that undermining fairness in judgements is just a "misinterpretation" of empathy. (2 marks)
4. What can we conclude from the assertion that judges cannot be expected to be superhumans? (1 mark)
5. Judges' biases could negatively affect employment discrimination cases. Elaborate on this statement. (3 marks)
6.
 - i. What is the author's attitude towards the exercise of compassion in the legal field when she states, "There are indeed reasons to not easily accept compassion in the legal realm" (lines 46 – 47)? (1 mark)
 - ii. Justify why the author holds such attitude as identified in 6.i.? (3 marks)
7. What is the meaning of "these guidelines have become a cure that is worse than the disease" (lines 66 – 67)? (2 marks)
8.
 - i. How do courageous judges act as a safety valve? (1 mark)
 - ii. Why is having courageous judges as a safety valve not considered a victory for victims affected by the sentencing guidelines? (2 marks)

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PART 2: VOCABULARY (5 MARKS)

Fill in the blank in each sentence below with a word from the paragraph stated in parenthesis. The word must best suit and express the meaning of the sentence.

Example:

0. If found _____ of the crime, the accused could serve a maximum of twenty years' imprisonment.
Word: guilty (paragraph 1)

1. Opting for not prosecuting war criminals who have committed genocides can be regarded as an act of _____ war crimes.
Word: _____ (paragraph 2) (1 mark)

2. If the plaintiff's argument _____ in the defamation suit, he will be awarded RM500,000 as damages.
Word: _____ (paragraph 3) (1 mark)

3. The tenancy agreement contains a clearly written clause which _____ restrains the tenant from leasing the premise to a third party.
Word: _____ (paragraph 5) (1 mark)

4. Grippled by the fear of punishment, the political critics are seeking _____ in a neighbouring country.
Word: _____ (paragraph 5) (1 mark)

5. A heavy penalty of RM50,000 and a long imprisonment term of twenty years are harsh and _____ actions intended to punish the tax evader.
Word: _____ (paragraph 6) (1 mark)

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SECTION B: GRAMMAR [10 MARKS]**REPORTED SPEECH (10 MARKS)**

Change each underlined direct speech to a reported statement. Write your answers in the Answer Booklet.

Anita, a woman in her early 20s, was being questioned at the office of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in Oakland, California. Her cousin was shot by a drug lord, One-Eyed Marvin, outside a local hamburger joint. She was present to share her story with her attorney and two ATF agents. James Newberry was one of the agents.

She began, (1) "I was walking to the back of the burger stand when gunshots rang out. I pulled my convertible into the lot, got out and headed to the back of the stand."

(2) "You went out to the back of the stand? Why did you do so?" Newberry said.

"I went to the ladies' room. (3) I heard the shot and dived under my car."

(4) "Please repeat your last statement."

"I heard the shots, dived under my car and my position under the vehicle blocked my view of the assault," she said.

(5) "Did you have a sense of impending danger?" he asked.

"No," she responded.

"Thank you," said Newberry, banging the table with his fist and standing up to leave. Anita turned to stare at him. (6) "Do you know the truth?" he asked.

(7) "You looked to see where the noise came from. You saw the man who shot your cousin."

Anita began to cry. She confessed that she had indeed witnessed the murder. Al Mabanag, the second ATF agent who was present, recalled that Anita's attorney was thunderstruck by how quickly she had confessed the truth to Newberry. (8) "Was it logical for her to hear gunshots and not look?" Newberry said to the attorney.

This is a typical case in which people can read others and have a talent for seeing the invisible. Newberry's lie detection abilities have earned him the title "truth wizard". Newberry also has the ability to read people. (9) "I always observe the people around me," said Newberry.

A few former FBI agents can detect gestures of discomfort and inconsistencies of language that others routinely miss. One of the agents is John Schafer who spent years in an FBI's elite task force. Schafer can see how suspects use certain words to omit facts. In one interrogation, one suspect told him, "Most of the days in the past, my wife was not at home." Schafer responded to him, (10) "Let's talk about a day with your wife at home. You're telling me there are days when you do things you don't normally do. Could this be one of those days?"

Adapted from Perina, K. (2016). Secrets of special agent. Retrieved from <https://www.psychologytoday.com/articles/201101/secrets-special-agents>

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SECTION C: WRITING [25 MARKS]

Answer the question below. Write an essay of 350 – 400 words.

Question

Since 1990s, men have been outnumbered by women in Malaysian universities. According to a recent report published by the Penang Institute, only 36 per cent of the undergraduates in Malaysian universities are males.

The decrease in the number of males in higher learning institutions negatively affects the social and economic position of the country. Do you agree? Give reasons to support your view.

End of Paper